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CHARLES ELMORE DROBNEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 129

HENRY GROOPMAN, INDIVIDUALLY, AND AS PRESIDENT OF
THE L. C. HEAT CONDITIONING CORPORATION,
Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

ARCHIBALD PALMER,
Counsel for Petitioner.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 129

UNITED STATES OF AMERICA,

Appellee,

against

THE L. C. HEAT CONDITIONING CORPORATION,
HENRY GROOPMAN, FRED PURCELL,

Defendants-Appellants,

and

CHARLES MALANESE, PHILIP CROSBY, JAVAN A.
STEELE, WILLIAM T. MULLIGAN, JOHN MEYERS
AND JOHN E. ROTH,

Defendants

**PETITION FOR EXTENSION OF TIME TO FILE
WRIT OF CERTIORARI (OR PETITION FOR CER-
TIORARI).**

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The petition of Henry Groopman, individually, and as president of the L. C. Heat Conditioning Corp., prays that he be granted an extension of time that a return of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit entered on the 15th day of

March, 1945, affirming the conviction, of the said corporation and your petitioner had on May 18th, 1943, by and before District Judge Marcus B. Campbell and a jury, the L. C. Heat Conditioning Corp. being fined the sum of \$3,000 and your petitioner, Henry Groopman, defendant-appellant, being sentenced to one (1) year and six (6) months. The indictment involved charged your defendant petitioners with a conspiracy to violate 12 U. S. C. A., Sections 1702, 1703, 1715 and 1731 and the amendments thereto and the regulations promulgated thereunder. The only penal provision contained in Title 1 of the National Housing Act is Section 1731 of U. S. C. A., Title 12.

Your petitioner desires to point to the fact that he is informed and verily believes there is no section of the National Housing Act which makes violation of Sections 1702, 1703, 1715 of U. S. C. A., Title 12 or the regulations promulgated thereunder by the administrator an offense. Your petitioner makes no claim that the only other statute involved is 18 U. S. C. A., Section 88.

Your petitioner is informed and believes that the question has never been settled by this Court as to whether or not an alleged crime of this kind is properly cognizable in the Federal Courts because it is well settled that one can only be subjected to punishment and crime in the Federal Courts for commission or omission of an act defined by statute or by regulation having legislative authority and then only if punishment is authorized by Congress. In the case of your petitioner and this Corporation against the United States, therefore, a conspiracy to violate the statutes cannot be a crime.

The decision of the United States against Groopman, et al., Circuit Court of Appeals for the Second Circuit as reported in 147 Fed. Rep. 2nd Series, under date of February 27th, 1945, in the opinion of the petitioner begs these

issues because as appears from the record thereof that the learned Second Circuit Court of Appeals erred in the following particulars wherein it failed to state on Page 784 that all moneys obtained under these loans were actually put into the properties for which the owners had made applications for loans. Secondly, that the Court failed to consider that out of the hundreds of loans made it could only refer to six thereof as being the subject matter of attack by the Government. Testimony disclosed that the claimed false statements contained therein were the information given by each applicant to your petitioner in answer to the questions printed in the application form. Surely, the bank at which these loans were handled, to wit: The Colonial Trust Company and the General Electric Contracts Corporation were in a better position before granting the loan and to find any errors or falsities before passing the loans, and no claim was ever made that any collusion existed between them and your petitioner. Thirdly, that in connection with completion certificates referred to at Page 784 that all such certificates were signed only when the heating work had been completed by the L. C. Heat Conditioning Corp. and no claim was made or suggestion had that the heating work had not been properly completed, or that the moneys to be obtained therefor had not been justly earned. Fourth, that there is no testimony of any kind showing that any of these jobs were solicited by these petitioners.

In view of these substantial errors of fact, the errors in law, the lack of any decisions of the United States Supreme Court, defining these alleged derelictions as crimes, this appeal for aid from this honorable Court for an extension of time should be considered as proper and well founded.

Your petitioner has never been convicted of any crime in all his life of forty-five years; has always borne an

honorable reputation in the communities with which he mingled; has always earned an honorable livelihood. He is the father of two children and of one expected child. From the date of your petitioner's indictment, on the 6th day of April, 1943, he has been under a terrible handicap in connection with the preparation of his trial and later his appeal. He has naturally been without any steady employment due to the terrible fanfare of publicity attending upon this case involving a sum of less than \$10,000. This case, as a horrible example, without mentioning the smallness of the alleged misuse of FHA funds (which your petitioner denies absolutely as having been misused or misapplied) filled the newspapers of this country with lurid details so that people were afraid to hire your petitioner or give his Corporation any heating work. Yet, all the while your petitioner was compelled to support his family. One of his children, a boy, now in the service of the United States, was then only seventeen years of age and going to Colgate University. The other was only just born. To keep his family, your petitioner saved some expense by having them live with his wife's mother where he aided in their support, and your petitioner obtained a position in New Haven, Connecticut, after informing his employers of his conviction. Then came the expense of the appeal from a case which lasted nearly six weeks during which period of time your petitioner was compelled to be in Court each day with no earning capacity. Then came the terrible expense of the appeal and the horror of the decision when the conviction was affirmed by the U. S. Court of Appeals on February 27th, 1945.

Despite the fact that your petitioner was informed that he must file a petition for a writ of certiorari within 30 days after March 15th, 1945, he was unable to obtain either

money for that petition or a lawyer who would review the case without pay. Your petitioner was informed, however, that if it were possible to obtain the expense of going to Washington to pray this Court for an extension of time, that that might be possible, if prosecuted before a ninety days' period had expired.

With the aid of a friend to advance these expenses tonight, and a friend's insistence that one Archibald Palmer, an attorney of this Court, help your petitioner, your petitioner is now before this Court praying for the relief contained in the annexed order.

Your petitioner has caused to be annexed to this petition the brief filed on his and the Corporation's behalf in the United States Court of Appeals for the Second Circuit, and the decision of the United States Circuit Court of Appeals appearing in the 144 Fed. Rep., Second Series.

WHEREFORE, your petitioner prays that either these papers be considered under your petitioner's distress of financial circumstances as his writ of error, and his petition for a writ of certiorari, or as grounds for this Court granting your petitioner's prayer for an extension of time.

Dated June 13th, 1945.

HENRY GROOPMAN,
Petitioner,
 ARCHIBALD PALMER,
Counsel for Petitioner.

STATE OF NEW YORK,
County of New York, ss:

Henry Groopman, being duly sworn, deposes and says:

That he is the petitioner named herein; that he has read the foregoing petition and knows the contents thereof to be true except as to the matters therein alleged of information

and belief and as to those matters he believes them to be true.

HENRY GROOPMAN.

Sworn to before me this 13th day of June, 1945.

SOPHIA JANES,

[SEAL.]

Notary Public, New York County.

Clerk's No. 35, Register's No. 191-J-7.

Commission expires March 30, 1947.

STATE OF NEW YORK,

County of New York, ss:

Henry Groopman, being duly sworn, deposes and says that he is president of L. C. Heat Conditioning Corp.:

That he is the president of the petitioner named herein; that he has read the foregoing petition and knows the contents thereof to be true except as to the matters therein alleged of information and belief and as to those matters he believes them to be true.

HENRY GROOPMAN.

Sworn to before me this 13th day of June, 1945.

SOPHIA JANES,

[SEAL.]

Notary Public, New York County.

Clerk's No. 35, Register's No. 191-J-7.

Commission expires March 30, 1947.



In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 129

HENRY GROOPMAN, INDIVIDUALLY, AND AS PRESIDENT OF THE L. C. HEAT CONDITIONING CORP.,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI AND PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioner Groopman, the L. C. Heat Conditioning Corporation, of which petitioner is president, and others were convicted (R. 850-851) in the District Court for the Eastern District of New York under an indictment charging that they conspired to violate the National Housing Act and the regulations thereunder (R. 9-17). On May 27, 1943, petitioner was sentenced to imprisonment for one year and six months (R. 18-19), and the corporation was sentenced to pay a fine of

(1)

\$3,000 (R. 20-21). Petitioner and the corporation and one other codefendant appealed to the Circuit Court of Appeals for the Second Circuit and on February 27, 1945, that court entered its opinion affirming the convictions (R. 937-943).

On March 15, 1945, after the expiration of the 15-day period allowed by Rule 27 of the Circuit Court of Appeals for the filing of a petition for rehearing, the judgment of affirmance and order for issuance of the mandate was entered, in accordance with Rule 30 (R. 943-944).

The petition for a writ of certiorari or an extension of time to file a petition for a writ (see Pet. 1, 5) was not filed until June 14, 1945, long after the expiration of the 30-day period, exclusive of Sundays and holidays, allowed by Rules XI and XIII of the Criminal Appeals Rules for the filing of a petition. The Criminal Appeals Rules make no provision for an extension of the time allowed to file a petition for a writ of certiorari. See Robertson and Kirkham, *Jurisdiction of the Supreme Court* (1936), p. 777. The petition should therefore be denied. See *United States ex rel. Coy v. United States*, 316 U. S. 342; *Bird v. United States*, 316 U. S. 693; *Buie v. United States*, 317 U. S. 689.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General.

SEPTEMBER 1945.

